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Orndorff v. Padlo Appellant's Brief Dckt. 43836

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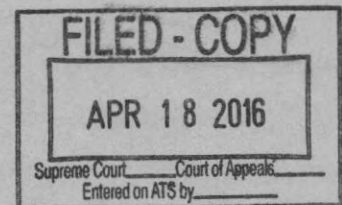
IN THE SUPREME COURT OF THE STATE OF IDAHO

STEPHANIE ORNDORFF, F/K/A)	
STEPHANIE MARTINEZ,)	DOCKET NO. 43836
)	
)	
Petitioner-Respondent,)	APPELLANT'S BRIEF
)	
vs.)	
)	
JOHN PADLO,)	
)	
)	
Respondent-Appellant.)	

Appealed from the District Court of the Fourth Judicial District of the State of Idaho, in
and for the County of Ada, Honorable Gerald Schroeder, Senior District Court Judge.
Trial Judge Honorable Michael Reardon.

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STATEMENT OF THE CASE

I. Nature of the Case

This is an appeal by Respondent-Appellant JOHN PADLO (hereinafter “John”) to the Idaho Supreme Court from the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, which sat in an appellate capacity following an appeal by John from the Magistrate Court of said Judicial District. The appeal is taken following an oral ruling from the bench by Judge Michael Reardon, Magistrate Judge, following a trial held on March 18, 2015, a subsequent Judgment Modifying Decree RE: Custody, Visitation, and Child Support entered April 15, 2015, and the Opinion on Appeal by the District Court entered November 16, 2016, Honorable Gerald F. Schroeder, Senior District Judge, presiding.

The Judgment Modifying Decree RE: Custody, Visitation, and Child Support entered April 15, 2015 (hereinafter “the modified judgment”), modified a prior stipulated custody order wherein the parties had been awarded joint legal and physical custody of the parties’ minor children (twin girls), on a week-on, week-off schedule, granting Petitioner/Respondent, STEPHANIE ORNDORFF, F/K/A STEPHANIE MARTINEZ (hereinafter “Stephanie”), primary physical custody of the minor children reduced reducing John’s visitation to every other weekend.

John appealed the Magistrate Court’s ruling based upon error and abuses of discretion. On appeal, the District Court affirmed the Magistrate Court’s decision.

II. Course of Proceedings

This case came before the trial court on Stephanie’s Petition to Modify Custody and

Support filed April 28, 2014. Her Petition sought to modify the prior custody, visitation, and child support order entered in the case, namely:

A Decree RE: Paternity, Custody, Visitation, and Child Support entered June 30, 2011, wherein the parties were awarded joint legal and joint physical custody of the minor children on a week-on, week-off schedule. No child support was ordered, given the parties' incomes and shared custody schedule.

In her April 28, 2015, Petition to Modify Custody Child Support, Stephanie alleged that a modification awarding her primary physical custody of the minor children was warranted because she had gotten married, was now a homemaker and thus more available to care for the minor children (whereas both parties previously worked, requiring the minor children to attend daycare), and because the minor children were going to begin attending school.

John filed an Answer and Counterclaim on June 12, 2014. He sought to dismiss Stephanie's Petition for lack of a substantial material change in circumstances which might warrant a modification. (In his Counterclaim, John requested a modification of the childcare provisions in the prior order, however, they are not at issue in this appeal and thus will not be addressed further.)

Stephanie filed a Motion for Parenting Time Evaluation on July 29, 2014. She requested Dr. Clay Ward be appointed to conduct a parenting time/custody evaluation. John objected, but the court granted Stephanie's Motion and ordered she to pay for the evaluation as the moving party.

The parties received Dr. Ward's written evaluation (also submitted to the court) shortly before the Pre-Trial Conference held October 28, 2014. Dr. Ward recommended Stephanie be granted primary physical custody of the minor children during the school year, that John have visitation three (3) weekends a month, and that the parties continue to share custody during the summer on a week on, week off schedule. At the Pre-Trial Conference, which was conducted in chambers, John's counsel expressed concern about Dr. Ward's evaluation and report for the following reasons: 1) Dr. Ward failed to interview or meet with John's fiancé, Paulina Carroll (hereinafter "Paulina"), other than briefly during the home visit because Paulina happened to be there (he did not intend to otherwise consider her, claiming the evaluation was only about the parents); 2) Dr. Ward's failure to interview or observe Paulina's two (2) daughters, who had resided with John for one (1) year and who were very close with and had known the parties' daughters since they were one (1) year old; and 3) Dr. Ward failed to speak to any of the parties' collateral witnesses to verify/investigate the information provided by the parties. Most concerning was that Dr. Ward made his recommendation after John informed him that Paulina's daughters spend every weekend at their father's home; thus, if the parties' daughters were only with John on the weekend, the girls would never see one another.

After this issue was brought up, Stephanie's counsel admitted his surprise that Dr. Ward did not speak to any collateral witnesses and admitted he did not know Dr. Ward did not do so as part of his evaluation. Judge Reardon stated he believed John would have retained his own expert, had he known Dr. Ward would not consider Paulina's children, who were living in the home or to speak to any collateral witnesses as part of his evaluation. Judge Reardon stated that

he would not force John to go to trial under such circumstances, and trial was vacated and reset so John could retain his own expert.

John moved forward with retaining an expert for a second evaluation and requested Stephanie's counsel execute a stipulation for the same. Stephanie's counsel responded that Stephanie did not agree to another evaluation being conducted, despite the court having vacated the trial for that exact purpose (John's trial Exhibit I).

John retained Barry Watts as his expert. Because Stephanie refused to participate in the second evaluation, Dr. Watts was forced to conduct his evaluation with only the pleadings of record, Dr. Ward's report, and the information provided by John and his witnesses. Dr. Watts report was submitted to the court and Stephanie's counsel on February 25, 2015.

At the second Pre-Trial Conference, held March 10, 2015, and also conducted in chambers, Judge Reardon informed John's counsel he would not admit or consider Dr. Watts' report because Dr. Watts did not meet with Stephanie as part of his evaluation. When John's counsel informed Judge Reardon that Stephanie refused to participate in the evaluation, Stephanie's counsel denied the same and claimed she had not refused to participate. John's counsel then inquired what Judge Reardon expected parties to do when the court authorizes an evaluation and a party subsequently refuses to participate. Judge Reardon stated that it would not "look good" for a party if they refused to participate, which John took to mean that the court would hold Stephanie's refusal to participate in the evaluation against her when it came to considering Dr. Watts' testimony at trial.

Because Stephanie's counsel denied that Stephanie refused to participate in Dr. Watts' evaluation, John's counsel contacted Stephanie's counsel after the Pre-Trial Conference and requested that Stephanie meet with Dr. Watts so that he could complete a full evaluation with Stephanie's participation. Counsel for Stephanie first made excuses as to Stephanie's lack of participation and then ignored further requests for her participation (John's trial Exhibit I).

The matter proceeded to trial March 18, 2015. Stephanie presented her case in chief, which included the testimony of Dr. Ward and his recommendations for custody. John objected to the admission of Dr. Ward's evaluation and testimony because he did not meet or observe Paulina's minor children, who were residing in the home, in compliance with Rule 719, Idaho Rules of Family Law Procedure. Tr Vol. I, p. 121, L. 9 – p. 123, L. 6. The court overruled John's objection holding that because the children were not legally step-children/half-siblings (John and Paulina were not yet married), they did not have to be considered.

In John's case in chief, he called Dr. Watts to challenge Dr. Ward's evaluation process and findings and to submit his own recommendation for custody. Dr. Watts testified that Dr. Ward's failure to interview or observe Paulina's minor children was an oversight in Dr. Ward's evaluation. He testified as to his expertise on family systems theory and that it is important that the entire family unit be considered, not necessarily just those legally related. Tr Vol. I, p. 155, L. 19 – p. 158, L. 4. Dr. Watts further testified that it was an oversight for Dr. Ward to not adequately address issues of the family make up in the cultural setting of John's family. Tr Vol. I, p. 161, L. 13 – p. 161, L. 19.

Stephanie objected to Dr. Watts providing any opinion testimony whatsoever about the

parties' minor children or giving his opinion regarding custody, claiming that proper foundation had not been established because Dr. Watts did not include Stephanie in his evaluation. The court sustained Stephanie's objection. Tr Vol. I, p. 155, L. 8 – p. 159, L. 19.

John next attempted to admit evidence that Stephanie refused to participate in Dr. Watts' evaluation (John's trial Exhibit I), thus Dr. Watts' evaluation and/or his testimony should be considered. Stephanie objected to the admission of Dr. Watt's testimony/evaluation on the basis of relevance. The court sustained the objection on the grounds of hearsay, despite John's argument that the new Idaho Family Law Rules of Civil Procedure have a relaxed standard of admission of evidence. The court again denied the request for admission, stating that even a relaxed interpretation of the rules did not allow for the admission of the evidence. Tr Vol. I, p. 149, L. 24 – p. 152, L. 20.

John also attempted to proffer testimony from Dr. Watts about the minor children's development, how a change in custody might affect them, and whether he felt Dr. Ward adequately addressed the minor children's continuity and stability. Counsel for Stephanie objected to the testimony, and the court sustained the objection, holding that any testimony about these specific children went directly to the ultimate issue of custody and thus was inadmissible. Tr Vol. I, p. 159, L. 7 – p. 161, L. 11. Given John was unable to proffer any opinion testimony from Dr. Watts regarding the parties' minor children and his recommendation for custody, or prove it was only due to Stephanie's refusal to participate in an evaluation that he could not get in Dr. Watts' opinion testimony/evaluation, Dr. Watts was excused as a witness.

At the conclusion of trial, the court issued an oral decision from the bench awarding Stephanie primary physical custody of the minor children and reducing John's visitation to every other weekend, despite Dr. Ward's recommendation that John have visitation three (3) weekends a month. The order was memorialized in written form on April 15, 2015. Tr Vol. I, p. 246, L. 11 – p. 256, L. 2.

John timely filed his Notice of Appeal, both parties filed briefs in support of their positions regarding the appeal, and oral argument was held on John's appeal October 1, 2015. The District Court issued its Opinion on Appeal November 16, 2015, affirming the Magistrate Court's decision.

John timely filed his Notice of Appeal to this Court.

STATEMENT OF FACTS

John and Stephanie were never married. They began dating in approximately July 2007, and Stephanie moved into John's home in December 2007. Wanting to start a family, they obtained donor eggs which were fertilized with John's sperm and implanted in Stephanie, resulting the birth of the parties' daughters, [REDACTED]

[REDACTED] [REDACTED] From the birth of the parties' minor children until the parties separated in December 2010, Stephanie worked full-time at the Ada County Public Defender's Office while John was self-employed, working from home as a graphic designer. Tr Vol. I, p. 13, L. 19 – p. 13, L. 23. John was the minor children's primary caregiver from their birth until the parties' separation, approximately one and a half (1.5) years, getting them up and ready each week day, handling the majority of their feedings, changings, and baths, and

providing the vast majority of their early education. Tr Vol. I, p. 170, L. 9 – p. 170, L. 17. John attended all of the minor children’s medical appointments. Tr Vol. I, p. 185, L. 1 – p. 185, L. 6.

When the parties separated, Stephanie moved from John’s home in Meridian to a home in Caldwell, and the parties began sharing custody on a week-on, week-off schedule. Stephanie initiated a custody action against John. In a motion for temporary orders, she demanded primary custody of the minor children and wanted them placed in full-time daycare because she no longer wanted John to care for the minor children while she worked and she did not want John’s parents watching the minor children. Tr Vol. I, p. 170 , L. 8 – p. 172, L. 14.

Even though he was the minor children’s primary caregiver and was more than capable of continuing to care for the minor children while Stephanie worked, John agreed to share custody on a temporary basis on a week-on, week-off schedule, and to put the minor children in daycare during his scheduled time.

The parties later stipulated to entry of a Decree RE: Paternity, Custody, Visitation, and Child Support (entered June 30, 2011), which granted the parties joint legal and joint physical custody of the minor children on a week-on, week-off schedule. No child support was ordered, given the parties’ incomes and shared custody schedule.

With the exception of Stephanie unilaterally taking the minor children out of daycare in violation of the parties’ custody order, the parties followed the custody schedule until the commencement of the modification action at issue. From entry of the custody order until the spring of 2014, Stephanie continued to work at the Ada County Public Defender’s Office and drove the minor children from Caldwell to daycare in Boise each day during her scheduled

visitation. Stephanie met her current husband, Owen Orndorff, a Boise attorney, after the death of his wife in early 2013. Owen was a widow with no minor children. Owen and Stephanie married February 8, 2014, at which point Stephanie quit her job at the Public Defender's Office and moved into Owen's home in Boise near Bogus Basin Road. Tr Vol. I, p. 16, L. 7 – p. 16, L. 25. Stephanie unilaterally removed the minor children from daycare during her scheduled custodial time and, without telling John, enrolled them in a preschool near her home, also without consulting or notifying John.

After entry of the initial custody order, in June 2011, John began working outside of the home, at Scentsy. He continues to reside in his home in Meridian, where he has lived for more than 10 years. He continued to take the minor children to daycare in Boise during his scheduled visitation, pursuant to the Court's order, despite Stephanie's unilateral decision to stop taking them to daycare. Tr Vol. I, p. 173, L. 7 – p. 174, L. 5. John, in fact, continued to take the minor children to daycare as ordered until Judge Reardon authorized the parties to remove the children from daycare given they both had access to free childcare.

John met his fiancé Paulina in May 2012 through their respective parents and they began dating in November 2012. Tr Vol. I, p. 57, L. 7 – p. 57, L. 14. They both come from large Polish families, which are very close and spend significant amounts of time together, thus it was not a surprise to learn John and Paulina's parents, who had been friends for several years, had introduced John's daughters to Paulina's two (2) daughters, Charlotte (age 11) and Anna (age 9), long before John and Paulina ever even met, when the twins were just one (1) year old. Tr Vol. I, p. 59, L. 6 – p. 59, L. 18.

Paulina moved into John's home in May 2014, and they intend to marry in 2016. Paulina works as a Deputy Sheriff in the Classifications Unit of the Ada County Sheriff's Department, where she has worked for more than 15 years. Tr Vol. I, p. 56, L. 11 – p. 56, L. 20. She has primary custody of her two daughters who visit their father every weekend from Friday until Sunday. John and Paulina's minor children are very close, and both John and Paulina's testimony verified that the minor children all consider themselves to be sisters in every sense of the word and that they would all be devastated to be split up and no longer see each other except for during the summer or family vacations. Tr Vol. I, p. 74, L. 17 – p. 90, L. 1.

Stephanie filed her Petition to Modify Custody and Child Support on April 28, 2015, initiating a modification action. A one (1) day trial was held, during which the court made evidentiary rulings resulting in John's appeal. John submits that the courts' rulings and custody determination were made in error and/or were abuses of discretion. John submits that, but for the court's improper rulings, there was no basis to award primary custody to Stephanie.

John appealed the decision of the Magistrate Court. The District Court affirmed the Magistrate Court's ruling and John now appeals.

ISSUES PRESENTED ON APPEAL

- I. Whether the District Court erred in affirming the Magistrate Court's admission of Dr. Ward's parenting time evaluation and/or expert opinion testimony, given Dr. Ward failed to consider, interview, or observe Paulina's minor children, who reside in the home with John, Paulina, and the parties' minor children.

- II. Whether the District Court erred in affirming the exclusion of evidence that Stephanie refused to participate in a parenting time evaluation authorized by the court.
- III. Whether the District Court erred in affirming the denial of Barry Watts' evaluation and/or expert opinion testimony because Stephanie did not participate in the evaluation.
- IV. Whether the District Court erred in affirming the award of primary physical custody of the minor children to Stephanie.
- V. Whether John is entitled to attorney fees and costs on appeal.

ARGUMENT

I. THE DISTRICT COURT ERRED IN AFFIRMING THE MAGISTRATE'S ADMISSION OF DR. CLAY WARD'S EVALUATION AND/OR EXPERT OPINION TESTIMONY, GIVEN HE FAILED TO CONSIDER, INTERVIEW OR OBSERVE PAULINA'S MINOR CHILDREN WHO RESIDE IN THE HOME WITH JOHN AND THE PARTIES' MINOR CHILDREN.

For issues involving the introduction of evidence, appellate courts review the trial court's decision under an abuse of discretion standard. *State v. Perry*, 139 Idaho 520, 521, 81 P.3d 1230, 1231 (2003). The trial court has broad discretion to admit or exclude evidence, and to determine whether a witness is qualified as an expert. *Id.* at 521-22, 81 P.3d at 1231-32. However, it must still be determined on appeal: (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by exercise of reason. *Swallow v. Emergency Medicine of Idaho, P.A.* 138 Idaho 589, 592, 67 P.3d 68, 71 (2003) (citing *State v. Merwin*, 131 Idaho 642, 962 P.2d 1026 (1998); *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)).

For an appeal from the district court, sitting in its appellate capacity over a case from the magistrate division, the standard of review is the same as expressed by the Idaho Supreme Court. The Supreme Court reviews the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *Pelayo v. Pelayo*, 154 Idaho 855, 858-59, 303 P.3d 214, 217-18 (2013). If those findings are so supported and the conclusions follow therefrom, and if the district court affirmed the magistrate's decision, the Supreme Court affirms the district court's decision as a matter of procedure. *Id.* Thus, the appellate courts do not review the decision of the magistrate. *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012). Rather, it is procedurally bound to affirm or reverse the decisions of the district court. *Id.*

Idaho Rules of Family Law Procedure Rule 719 governs parenting time evaluations, which are expert investigations and analysis of the best interest of children with regard to disputed parenting time issues. According to Rule 719, the purpose of a parenting time evaluation is to provide the court with information it may consider to make decisions regarding custody and parenting time arrangements that are in a child's best interest accomplished, among other things, by assessing the capacity to parent, and the developmental, emotional, and physical needs of the child. Unless otherwise specified in the order for the evaluation, evaluators are required to consider and respond to the factors set forth at Idaho Code Section 32-717. *Id.*

The Magistrate Court in this case did not make any exception to Dr. Ward considering the factors of Idaho Code Section 32-717 thus Dr. Ward was required to consider in relevant part: “(c) The interaction and interrelationship of the child with his or her parent or parents, and

his or her siblings; and (d) The child's adjustment to his or her home, school, and community.”

Further, pursuant to subsection F(2) of Rule 719 of the Idaho Rules of Family Law Procedure which states in relevant part:

All evaluations shall include, at a minimum:...2. Data collection and analysis sufficient to allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; **the quality of attachment to each parent and that parent's social environment**; and reactions to the separation, divorce, or parental conflict. This process shall include...c. conducting age-appropriate interviews and observation of the child or children with each parent, stepparent(s), step-and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child.
(Emphasis added).

During Stephanie’s case in chief, she proffered testimony of Dr. Ward including his recommendations for custody. John objected to the admission of Dr. Ward’s expert opinion testimony given he did not interview or observe Paulina’s minor children whom reside in the same home as the parties’ minor children. The court overruled the objection holding that because the children were not legally step-children/siblings (John and Paulina were not yet married) they did not have to be considered.

John argued at trial and on appeal that Dr. Ward’s evaluation and/or testimony should have been excluded because he failed to comply with Rule 719’s requirement to consider the relevant factors in 32-717 (specifically subsections (c) and (d)) because he failed to conduct age-appropriate interviews and observations with the children and their step-and half-siblings, and he failed to analyze the minor children’s adjustment to their home which would include observing/interviewing Paulina and her minor children whom lived in the home and were a

substantial part of the minor children's daily lives.

The District Court affirmed the Magistrate Court's admission of Dr. Ward's testimony/evaluation, holding that Rule 719 was not violated (thus no err was committed admitting Dr. Ward's testimony/evaluation) because John and Paulina are not married, thus Paulina's minor children did not need to be considered.

John respectfully submits the District Court erred in affirming the Magistrate Court's decision because it did so only considering part of John's argument, that because Paulina's minor children are not legal siblings, they need not be considered/observed/interviewed. The District Court failed to acknowledge or respond to John's argument on appeal that Dr. Ward's report should also have been excluded because Dr. Ward failed to consider the minor children's adjustment to their home as required under Idaho Code Section 32-717(d) by failing to observe the minor children's actual home environment with Paulina and her children, and because he failed to comply with subsection F(2) of Rule 719 of the Idaho Rules of Family Law Procedure, *supra*.

John submits that Dr. Ward could not have considered the minor children's adjustment to their home and community when he wholly failed to observe the minor children's actual home environment. The minor children's home environment included Paulina's minor children, whether or not they were legal siblings, children whom the minor children in question have lived with for a substantial period of time and with whom they have developed a very strong bond. Ignoring everyone in the home, with the exception of John, defeats the purpose of conducting a parenting time evaluation which is to provide information to the trial court regarding the minor

children's environment so the trial court can make a custody determination in the best interest of the minor children. An evaluator cannot fail to observe the actual daily environment and interactions with other individuals and still be able to properly analyze the minor children's adjustment to their home and their developmental and emotional needs, all of which are, of course, impacted by their surroundings. In this case, the minor children's attachment to John and his social environment, which includes Paulina and her minor children, was not properly evaluated. As John argued on appeal to the District Court, if the situation were such that a registered sex offender was residing in John's home, Dr. Ward certainly would have investigated the circumstances surrounding the living situation and would want to know how the minor children handled that person in the home. John submits it should not be any different here in that everyone in the home and in the minor children's daily lives should be considered.

John respectfully submits that because the District Court failed to acknowledge, respond to or rule on John's other arguments for excluding Dr. Ward's testimony/evaluation, the District Court erred in affirming the Magistrate Court's decision to admit Dr. Ward's testimony/evaluation.

II. THE DISTRICT COURT ERRED IN AFFIRMING THE TRIAL COURT'S DENIAL OF EVIDENCE THAT STEPHANIE REFUSED TO PARTICIPATE IN A COURT-AUTHORIZED PARENTING TIME EVALUATION.

During John's case in chief, he attempted to admit evidence (John's trial Exhibit I) that Stephanie refused to participate in a second parenting time evaluation which had been authorized by the court. The purpose of the evidence was to lay a foundation for admitting Dr. Watts' evaluation, given Stephanie did not participate in the same (a requirement to have Dr. Watts'

evaluation/opinion testimony regarding custody admitted). Stephanie objected to admission of the exhibit on the basis of relevance. The court sustained the objection on the grounds of hearsay, despite John's argument that the new Idaho Rules of Family Law Procedure have a relaxed standard for the admission of evidence. The court again denied the request for admission, stating that even a relaxed interpretation of the rules did not allow for the admission of the evidence. Tr Vol. I, p. 149, L. 24 – p. 152, L. 20.

The District Court agreed that the Magistrate Court should not have excluded the evidence to prove Stephanie refused to participate in the evaluation with Dr. Watts, however, because the District Court did not understand how John was prejudiced by the exclusion of the evidence (given other evidence was admitted), it ruled that the Magistrate Court did not commit reversible error. John respectfully submits that he explained in his brief and on appeal how he was prejudiced by the Magistrate Court's exclusion of the evidence: because Stephanie did not participate in the evaluation with Dr. Watts, neither Dr. Watts' opinion testimony about custody, nor his evaluation, could be admitted into evidence. Because the Magistrate Court excluded evidence that would have allowed John to prove that Stephanie had refused to participate in the evaluation, John was prevented from introducing Dr. Watts' opinion testimony regarding custody and his evaluation. Stephanie's refusal to participate in Dr. Watts' evaluation barred John from submitting substantial evidence refuting Dr. Ward's report and custody recommendation. Because John could not prove the only reason he could not present such evidence was because of Stephanie's actions, the evidence which was excluded by the Magistrate Court, John could not properly present his case, and his right to continue having the care,

custody, and control of his minor children was impacted.

John respectfully submits that the District Court erred in affirming the exclusion of evidence regarding Stephanie's failure to participate in Dr. Watt's evaluation, because the District Court failed to recognize the actual impact of that evidentiary ruling. The District Court agreed that the evidence should not have been excluded and, given the consequences of the exclusion of that evidence, that matter should be remanded to the Magistrate Court to determine whether Dr. Watts' opinion testimony/evaluation should have been admitted.

III. THE DISTRICT COURT ERRED IN AFFIRMING THE MAGISTRATE COURT'S EXCLUSION OF DR. WATTS' OPINION TESTIMONY/EVALUATION.

John submits that the District Court erred in affirming the Magistrate Court's exclusion of Dr. Watt's opinion testimony regarding custody recommendations/his evaluation. As explained in the preceding section, the District Court found that the evidence that Stephanie refused to participate in the evaluation should have been admitted. John submits that because the evidence should have been admitted, the court should have considered it in determining whether Dr. Watts' opinion testimony/evaluation should have been admitted. Because you cannot have one ruling without it affecting the other, John submits the District Court erred in affirming the Magistrate Court's decision.

IV. THE DISTRICT COURT ERRED IN AFFIRMING THE MAGISTRATE COURT'S AWARD OF PRIMARY PHYSICAL CUSTODY TO STEPHANIE BASED UPON IMPROPER EVIDENTIARY RULINGS.

John submits that because the District Court's found that the evidence that Stephanie refused to participate in Dr. Watts' evaluation should have been admitted, the Magistrate Court

should have considered that evidence in deciding whether to allow Dr. Watts' opinion testimony and evaluation. These factors should have ultimately been considered when determining custody. Because the first ruling was in error, all other rulings based upon that error must also be in error, thus the District Court erred in affirming the Magistrate Court's award of custody which was based upon a series of errors which affected John's right to continue having the care, custody, and control of his minor children.

V. JOHN IS ENTITLED TO AN AWARD OF ATTORNEYS FEES ON APPEAL


John respectfully requests an award of attorney's fees and costs on appeal pursuant to Idaho Code Section 12-121, 12-123 and Idaho Appellate Rule 41. John submits he is entitled to an award of attorney's fees and costs on appeal, as the District Court acknowledged errors of the Magistrate Court that should have resulted in a remand of the case back to the Magistrate Court.

CONCLUSION

John respectfully submits that the District Court should be overruled, the custody modification should be vacated, and the matter remanded to Magistrate Court to address the errors made by the Magistrate Court and District Court.

John should be awarded his attorney fees and costs on appeal.

DATED this 18th day of April, 2016.



TESSA L. BENNETT
Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

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